

AN ORDINANCE BANNING TOBACCO VENDING MACHINES IN THE CITY OF
HELENA, ALABAMA.

BE IT ORDAINED by the City Council of the City of Helena as follows:

Section 1. PURPOSE.

WHEREAS, the United States Surgeon General has long warned smokers that smoking tobacco, or any other weed or plant is hazardous to their health; and

WHEREAS, The National Center for Disease Control has concluded that more than 400,000 United States citizens die each year from tobacco-caused or related diseases and tobacco related illness cost businesses and individuals in the United States billions of dollars per year; and

WHEREAS, local news reports say that over 50 million Americans smoke and at least twenty-five percent (25%) of Alabama's population smokes; and

WHEREAS, the National Institute on Drug Abuse has found that nicotine in tobacco products is a powerful addictive drug and identifies nicotine addiction as the most widespread example of drug dependence in the United States; and

WHEREAS, ninety percent (90%) of adults who now smoke started smoking between the ages of nine and eighteen years; and

WHEREAS, three million children smoke daily in the United States, and over seventy-five percent (75%) buy their own cigarettes. Children currently have ready access to cigarettes and other tobacco products as a result of the availability of cigarette vending machines. Scientific studies have shown that minors are successful in buying tobacco products from cigarette vending machines in areas such as bars or cocktail lounges, where minors are not legally permitted to be present, are also readily utilized by minors to obtain tobacco products; and

WHEREAS, The United States Surgeon General has consistently favored elimination of cigarette vending machines for public health reasons; and

WHEREAS, the American Cancer Society, American Lung Association, American Heart Association, American Medical Association, and Alabama Medical Association, representing the overwhelming view of this recognized professional medical associations, support the elimination of cigarette vending machines for public health reasons; and

WHEREAS, no other dangerous product or drug, cancer-causing product or drug, or addictive product or drug is sold through vending machines. No other product or drug which minors are prohibited from purchasing is sold through vending machines.

NOW, THEREFORE, the compelling purpose and intent of this ordinance is to better serve public health, safety and welfare; to significantly reduce the ability of minors to illegally obtain tobacco products by banning tobacco and tobacco accessory vending machines, and to generally promote the health and welfare of all people in the community against health hazards and harmful effects of using addictive tobacco products.

Section 2. DEFINITIONS.

For the purposes of this Ordinance the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words used in the singular number include the plural number. The word "shall" is always mandatory and not merely directory.

- (1) "City" means the City of Helena, Alabama.
- (2) "Employee" means any person who is employed by an employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services for a non-profit entity.
- (3) "Employer" means any person which employs one (1) or more persons.
- (4) "Minor" means an individual who is less than 19 years of age.
- (5) "Owner" shall mean and include the lessee, sublessee, assignee, part owner, joint owner, tenant in common, joint tenant, tenant by the entirety, managing agent, officers of the corporation or other person having the right of ownership or possession or the right to sell, rent or lease any real property.
- (6) "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
- (7) "Tobacco Accessories" means any cigarette papers or wrappers, pipes, holders of smoking materials of all types, cigarette rolling machines, and any other item designed primarily for the smoking or ingestion of tobacco products.
- (8) "Tobacco Products" means any substance containing tobacco leaf, including but not limited to cigarettes, cigars, smoking tobacco and smokeless tobacco.
- (9) "Tobacco vending machines" includes any machine or device designated for or used for the vending of cigarettes, cigars, tobacco, or tobacco products upon the insertion of coins, paper bills, trade checks, slugs, or credit cards.

Section 3. ENFORCEMENT.

The provisions of this ordinance are enforceable by any duly authorized municipal code enforcement officer, [revenue examiner] police officer or as otherwise allowed by law.

Section 4. SALE OF CIGARETTES AND OTHER TOBACCO PRODUCTS FROM VENDING MACHINES PROHIBITED.

(a) No person shall locate, install, keep, maintain or use, or permit the location, installation, keeping, maintenance or use on his, her or its premises of any tobacco vending machine used or intended to be used for the purpose of selling or disposing of any tobacco products or tobacco accessories therefrom.

(b) Any tobacco vending machine in use on the effective date of this ordinance shall be removed before December 31, 2000 (end of the business license year).

Section 5. VIOLATIVE TOBACCO VENDING MACHINES

Any tobacco vending machine not removed from the premises or converted to a permissible use within the time limit set forth by Section 4(b) shall be deemed to be a public nuisance, and may be abated by the City in a civil action or other appropriate legal proceedings.

Section 6. VIOLATION: PENALTY.

Any person, firm or corporation violating any provisions of this Ordinance shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished as stated below. Each day such violation is committed or permitted to continue shall constitute a separate offense and shall be punishable as such hereunder.

First Offense.....	\$250.00
Second Offense.....	\$500.00
Third Offense.....	\$500.00

In addition to the fines set out above, for the third and any subsequent violations of this ordinance, the City Council shall conduct a public hearing wherein the violating party shall be examined as to the fitness of the violator continuing to do business within the City of Helena. At the conclusion of said public hearing, the City Council may revoke the business license of the violator to conduct business in the City.

Repeated violations may be the basis for a review of and revocation of presently outstanding business licenses issued by the City.

Section 7. MISCELLANEOUS.

(a) *Construction with Other Laws.* Nothing in this ordinance excuses noncompliance with any state, federal or local law or any rule or regulation which prohibits tobacco vending machines.

(b) *Validity or Constitutionality.* If any portion of this ordinance shall be held unconstitutional, invalid, or unenforceable, such holdings shall not affect the remaining portions nor render the remaining portions invalid, and to that end the provisions hereof are declared to be severable.

Section 8. ORDINANCES REPEALED.

All ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 9. EFFECTIVE DATE.

That this ordinance shall become effective at 12:01 a.m. on December 31, 2000, or its other wise becoming a law.

ADOPTED this the 18 day of December, 2000.

APPROVED:

Charles W. Perkins
Mayor

ATTEST:

Larry C. Dunaway
City Clerk